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AUG 26 1999

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Department of Water Resources

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August 23, 1999

Mr. Karl J. Dreher, Director
Idaho Department of Water Resources
1301 No. Orchard Street
Statehouse Mail
Boise ID 83701

RECEIVED

SEP 01 1999

Department of Water Resources
Eastern Region

**Re: Measuring Devices on Warm Springs Creek Above
Mackay Reservoir**

Dear Director Dreher:

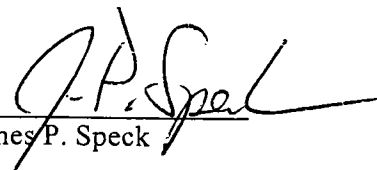
My firm represents David R. Stoecklein together with various entities in which he is an owner, partner or manager (collectively "Stoecklein"). I am enclosing a copy of a March 4, 1991 Order issued by the Department regarding the installation and maintenance of headgates, controlling works and measuring devices within the Big Lost River Basin together with the cover letter from Mr. L. Glen Saxton by which copies of the Order were forwarded to affected water users. As you may know, many of the diversions from the two branches of Warm Springs Creek and other spring fed creeks above Mackay Reservoir do not comply with this Order. Stoecklein believes full and complete enforcement of the Order is necessary in order to properly administer the distribution of water rights from the sources. The implementation of the required headgates, control works and measuring devices should also minimize potential conflicts and disputes over excess diversions from these streams and potential adverse impacts on excellent fish habitat.

If there are any questions about this request, please call me as soon as possible. I am sending copies of this correspondence to Norm Young and Scott King who have been involved in previous discussions with my client about this issue. Thank you.

Sincerely yours,

SPECK & AANESTAD
A Professional Corporation

By:


James P. Speck

JPS:jal

Enclosures

cc: Client

Michael Creamer, Esq. (w/encls.)

Norman Semanko, Esq. (w/encls.)

Norman Young (w/encls.)

Scott King (w/encls.)



DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 -(208) 327-7900

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

March 4, 1991

CERTIFIED MAIL

Dear Water User:

RE: MEASURING DEVICE INSTALLATION ORDER

Enclosed is an order requiring you to install a headgate, controlling works and measuring device for your diversion(s) of surface water in the Big Lost River Drainage.

The need for the installation was determined from an on-site inventory of diversions by department personnel during the 1990 irrigation season. Initially, the diversions from the Big Lost River above Mackay Reservoir, and from streams located above Mackay Reservoir that are listed in the Utah Construction v. Abbott Decree (Abbott decree) as tributary to the Big Lost River, have been identified as needing headgates, controlling works and measuring devices to insure equitable distribution of the water.

The department is continuing the on-site inventory of diversions within the basin and may order the installation of the devices on additional diversions.

The Abbott decree also required all diversions of 50 cubic feet per second or more to install recording measuring devices. The reinstallation of these recording devices is not required at this time; however, the recording devices may be required as a part of the Snake River Basin Adjudication. The department is also reviewing the need for measuring devices and controlling works at the head of the "back" channel as described in the Abbott decree.

Some of the waterusers who receive the order may already have adequate measuring devices and control works. Others have none or have works in need of repair. If you are not sure whether the order applies to your diversion(s), you may request review of the matter by the department's regional office in Idaho Falls or by the watermaster. Unless specifically exempted from the requirements of the order, you are obligated to make the ordered installation to insure equitable distribution of water.

Sincerely,

L. GLEN SAXTON, Chief
Water Allocation Bureau

Encl: 1

c: IDWR - E. Region
Doug Rosenkrance

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF INSTALLATION)
OF HEADGATES, CONTROLLING)
WORKS AND MEASURING DEVICES)
_____)

ORDER

FINDINGS OF FACT

1. The rights to the use of water of the Big Lost River and tributaries have been determined in the case of Utah Construction Company v. John F. Abbott et. al. in the District Court of the United States in and for the District of Idaho, Eastern Division.
2. The Utah Construction v. Abbott decree required all waterusers to install and maintain suitable headgates, controlling works and measuring devices at their points of diversion.
3. The use of water in the Big Lost River drainage has been thoroughly investigated in the recent claims taking and field review activity of the Snake River Basin adjudication. A number of diversions were determined to either not have a measuring device or to have an inadequate measuring device.
4. Suitable headgates, controlling works and measuring devices are required to ensure proper delivery of water to those entitled to its use.

CONCLUSIONS OF LAW

1. The Director of the Department of Water Resources (Director) has supervisory authority over operation of water districts pursuant to Title 42, Chapter 6 of the Idaho Code.
2. Title 42, Chapter 7 of the Idaho Code requires appropriators to install and maintain measuring devices above reservoirs and in streams to measure flows and empowers the Director of the Department of Water Resources to order the installation of such measuring devices.
3. Suitable headgates, controlling works and measuring devices are required at points of diversion to allow the watermaster of Water District No. 34 to properly deliver water to those entitled to its use.
4. The Director should order the installation and maintenance of suitable headgates, controlling works and measuring devices.

ORDER

IT IS, THEREFORE, HEREBY ORDERED, that waterusers within the Big Lost River basin as shown on the attached Certificate of Service are required to install and maintain suitable headgates, controlling works and measuring devices as determined by the Director.

IT IS, FURTHER HEREBY ORDERED, that the installation required by this order be complete on or before the start of the 1991 irrigation season unless extended for good cause by the Director.

Dated this 4th day of March, 1991.

for *N. C. Young*
NORMAN C. YOUNG
Administrator

CERTIFICATE OF MAILING

I Certify that on this the 5th day of March, 1991, a true and correct copy of the Order for installation of measuring equipment in the Big Lost River, was sent certified mail to:

Herb Whitworth
Star Route
Mackay, ID 83251

San Felipe Ranches
P. O. Box 388
Mackay, ID 83251

Lani & Dan Mulick
Star Route
Mackay, ID 83251

Morgan Harlodsden Land
& Livestock
Star Route
Mackay, ID 83251

Gary & Edith Larter
Star Route
Mackay, ID 83251

Lola L. Coates
Star Route
Mackay, ID 83251

Milt Butler
Mackay, ID 83251

Clinton & Esther Bitton
Star Route
Mackay, ID 83251

Bret L. Zollinger
Star Route
Mackay, ID 83251

Richard A. Smith
Patricia A. Smith
Star Route
Mackay, ID 83251

Bette Jean Kent
Pernecy D. Kent
Marcia Lee Kent
P. O. Box 365
Mackay, ID 83251

Victor & Scott Johnson
Churn Dasher Ranch
Star Route
Mackay, ID 83251

Broken River Ranch
c/o Robert C. Hadley
Star Route
Mackay, ID 83251

Gordon & Ina Mae Harris
Star Route
Mackay, ID 83251

Brian Barsotti
P. O. Box 2133
Ketchum, ID 83340

David Stoecklein
Shelley Stoecklein
Mary J. Stoecklein
Walter Stoecklein
P. O. Box 856
Ketchum, ID 83340

Marcelle J. Bright
Raymond E. Bright
Star Route
Mackay, ID 83251

Roxanne R. Hale
Star Route
Mackay, ID 83251

Castle Rock Owners Assn.
c/o Mark Brown
P. O. Box 5618
Ketchum, ID 83340

Harry J. Crawford
Route 1, Box 8
Darlington, ID 83231

William & Heidi Davis
P. O. Box 156
Seligman, AZ 86337

Terrence V. Donahue
Carol J. Donahue
Star Route
Mackay, ID 83251

Arlene & Werner Erickson
60 Trail Creek
Pocatello, ID 83201

Melvin R. Freeman
230 Wilson St.
Midvale, UT 84047

Eugene H. Gabert
P. O. Box 206
Mackay, ID 83251

Debra Gifford
Elizabeth Gifford
c/o Kathie Vangunten
2727 N. Holland-Sylvania
Toledo, OH 43615

Goddard's Bar 13 Ranch
Star Route
Mackay, ID 83251

Warren Gifford, III
Ohio Citizens Bank Trustee
c/o Kathie Vangunten, Esq.
2727 N. Holland-Sylvania
Toledo, OH 43615

Marvin & Hilda Goddard
Star Route
Mackay, ID 83251

Delvin A. Hale
Star Route
Mackay, ID 83251

Diane Hatmaker
Joan Johnson
Star Route
Mackay, ID 83251

Richard Hejmanowski
3100 Burkhart Ln.
Sebastopol, CA 95472

Rodney C. Hill
911 E. Colorado Blvd.
Suite 200
Pasadena, CA 91106

Howard Ranches Corp.
Box 111
Whitebird, ID 83554

A. Dean Isom
Mary M. Isom
673 S. 1600 W.
Provo, UT 84601

J & R Cattle, Co.
Lehman Canyon Rd.
Mackay, ID 83251

Joan Johnson
Walter H. Johnson
Star Route
Mackay, ID 83251

Scott M. Karterman
Dina C. Karterman
P. O. Box 971
Sun Valley, ID 83352

L & S Partnership
P. O. Box B
Twin Falls ID 83303

Sally Rae Johnson
Star Route
Mackay, ID 83251

James E. Lundy
Rita M. Lundy
P. O. Box 351
Mackay, ID 83213

Earl McAfee
Rt. 1 Box 32
Arco, ID 83213

Pence Ranch Inc.
P. O. Box 294
Mackay, ID 83251

Lynn D. Reno
Diane W. Reno
7616 Bonanza Dr.
Bakersfield, CA 93307

John Theodore Rosenkrance
P. O. Box 15
Mackay, ID 83251

Nancy Roskelley
60 Trail Creek
Pocatello, ID 83201

Wiley F. Smith
Star Route
Mackay, ID 83251

Carolyn Smith
Star Route
Mackay, ID 83251

Rodger Sorensen
Mary Sorensen
245 N. Hooper
Soda Springs, ID 83276

State of Idaho
Dept. of Fish and Game
Box 25
Boise, ID 83707

Logan E. Williams
Linda C. Williams
Star Route
Mackay, ID 83251

Thomas P. Ziegler
Helen M. Ziegler
P. O. Box 2020
Ketchum, ID 83340

Aslett Ranches
P. O. Box B
Twin Falls, ID 83303



RITA I. FLECK
Secretary/Records Manager